IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 235 of 2004
WITH
CIVIL APPLICATION NO. 4989 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HEIRS OF DECD. PUSHPABEN D/O DWARKADAS GIRDHARDAS

Versus

HARIBHAI FULABHAI BELDAR

Appearance:

1. Appeal from Order No. 235 of 2004
DELETED for Appellant No.
MR TUSHAR MEHTA for Appellant No.
MR VIKRAM J THAKOR for Respondent No. 1
..... for Respondent No. 2
MR RJ GOSWAMI for Respondent No. 2/1-2/3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 03/11/2004

ORAL JUDGEMENT

1. This Appeal from Order is filed by original defendants No. 2 to 8 of Special Civil Suit No. 128 of 2002 which is filed by the respondent No. 1 herein. The said suit is filed for specific performance of an agreement to sale. In the said suit, the plaintiff has given an application, exh. 5 for interim injunction on the ground that there is an agreement to sell in favour of the plaintiff and that he has a good case for getting decree for specific performance, and that the defendant may be restrained from transferring or alienating the property in any manner whatsoever. The trial Court found that there is a prima facie case, and, therefore, granted injunction. Against the said order granting injunction, original defendants No. 2 to 8 have preferred this Appeal from Order.

2. At the time of hearing of this Appeal from Order, it is submitted by the learned advocates appearing for both the sides that the parties are agreeable to restrict the injunction granted by the trial Court to 1/3 rd share of original defendants No. 1 (a), 1(b) and 1(c). Since there is a consensus between the parties, it is not necessary for this Court to examine the impugned order passed by the trial Court in detail.

3. In view of the consensus between the parties, it is directed that the interim injunction granted by the trial Court below exh. 5 on 9.1.2004 shall operate to the extent of 1/3rd share of original defendants No. 1 (a), 1(b) and 1(c}, i.e. Bharatbhai Naranbhai Patel, Maulik Bharatbhai Patel and Harsh Bharatbhai Patel in the suit property. The order passed by the trial Court stands modified to the aforesaid extent.

4. This Appeal from Order is partly allowed, with no order as to costs.

5. Considering the facts and circumstances of the case and in view of request of both the sides, the hearing of the suit pending before the trial Court is expedited, and the learned trial Judge shall try to dispose of the case within a period of one year, if possible. Writ to be sent to the trial Court forthwith.

6. In view of the aforesaid order passed in the main Appeal from Order, the Civil Application does not survive, and it stands disposed of accordingly. Rule is discharged. No order as to costs.

mathew [P.B.MAJMUDAR, J.]